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**Scituate Zoning Board of Appeals  
Meeting Minutes  
June 18, 2015**

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**PRESENT:** Ed Tibbetts, Acting Chairman, Frank Lynch and Anthony Bucchere.  
Also present: Neil Duggan, Building Commissioner and Local Zoning Enforcement Officer.

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The Scituate Zoning Board of Appeals held a public hearing on June 18, 2015 at the Scituate Town Hall located at 600 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:00 P.M.

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**First Application: Alice's House, Inc. (by Janet C. Gibson, President) of 815 Union Street, Marshfield, MA** requests a Special Permit/Finding in accordance with Scituate Zoning Bylaw Sections 810.2, 830, 950.2B, 950.2D, and/ or G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant that the razing and reconstruction, extension, and/ or alteration of a pre-existing nonconforming single family residential structure that was destroyed by fire on March 8, 2012, and a pre-existing nonconforming accessory structures thereto, on a pre-existing nonconforming lot at **112 Humarock Beach Road, Scituate, MA (Assessor's Parcel 72-1-13-F-R)** will be less nonconforming, and will not be substantially more detrimental or injurious to the neighborhood, than the destroyed and/ or existing nonconforming structure(s) or use(s).

Representing Janet C. Gibson, President Alice's House, Inc.: Attorney Jeff De Lisi and Greg Morse, Morse Engineering.

Documents Presented: Site Plan dated June 15, 2015.

Mr. De Lisi read Section 830 of the Scituate Zoning Bylaw and stated his client was seeking three findings: the application was filed on March 4, 2015, prior to the three year anniversary. The proposed new dwelling will be less nonconforming as it would be located outside a FEMA velocity zone, but in a FEMA flood zone AO. Finally, the applicant was seeking relief from the Zoning Board of Appeals as requested in the application.

Mr. Morse explained to the Board the proposed new dwelling would be pulled back from the ocean, thereby increasing the setbacks. Floor area would increase from 1635 square feet to 2611 square feet, a proposed increase of approximately 60%. The proposed accessory building would be reconstructed and also pulled back from the ocean.

Members of the Board did not have any questions for the applicant. Mr. Tibbetts opened the meeting for public comments.

Mr. John Clarkeson, 66 Kane Drive, inquired about the seawall distance to the house.

Mr. Morse stated there would be thirty one feet (31') from the house to the sea wall.

**Mr. Lynch moved to find the application was filed timely, and the proposed reconstruction according to the plan dated June 15, 2015 is less non-conforming than the previous structure, that proposed reconstruction does not intensify any preexisting nonconformities**

**and that the proposed construction is not substantially more detrimental to the neighborhood, seconded by Anthony, all in favor, unanimous.**

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**Second Application: Dana Sceviour, 25 Irving Street, Canton, MA,** requests a finding or other appropriate relief pursuant to Scituate Zoning Bylaws, Section 810.2 and G.L. Ch. 40A, Section 6, to allow for the reconstruction of a single family dwelling at **15 Lynda Lane, Scituate, MA (Assessor's Parcel 54-1- 33).**

Representing the Applicant: Attorney Jeff De Lisi  
Document Presented: Plan dated April 8, 2015 and revised on June 16, 2015.

Mr. De Lisi explained to the Board the property is located in the R-2 zone. The area and lot width create the nonconformity. The lot area is 17,478 square feet and 100' of frontage in a zone which requires 20,000 square feet and 125' of frontage to be a conforming lot. The proposed new dwelling would meet or exceed all setback requirements. Revised plan shows building shifted five feet to the right in order to keep an established Maple tree on the lot.

Mr. Tibbetts opened the hearing to public comments.

Mr. John Clarkeson, Chairman of Scituate Water Resource Committee, inquired what approvals may be required from Planning and Conservation.

Mr. Duggan explained a review by the Planning Board is not required for a single family dwelling. Building permit applications are referred to the Town Planner, Conservation Agent, Board of Health Agent, DPW and the Fire Department, as applicable, before they are approved by the Building Commissioner.

**Mr. Bucchere made a motion to find the proposed single family dwelling as shown on plan dated April 8, 2015 prepared by Collins Civil Engineering Group, Inc., as revised on June 16, 2015, at 15 Lynda Lane creates no new nonconformities nor intensifies any existing nonconformities and is not substantially more detrimental to the neighborhood, seconded by Mr. Lynch, all in favor, unanimous.**

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**Third Application: John K. Tedeschi, Tedeschi Builders Developments, LLC, 17 Northey Farm Road, Scituate,** requests a hearing after a remand from Superior Court. The Applicant requests a Special Permit under Section 470.9 of the Scituate Zoning Bylaw to construct a single family dwelling in the Scituate floodplain and Watershed Protection District at **Lot 295, 0 Foam Road, Scituate, MA (Assessor's Parcel 46-13-16-0-R).**

Representing the Applicant: Attorney Richard Henderson and Greg Morse of Morse Engineering

Mr. Duggan stated according to Town Counsel new evidence can be heard as this was a new hearing.

Mr. Henderson disagreed. He stated that in the remand the ZBA was asked to consider four public policy concerns as written in the Supreme Judicial Court (SJC) order dated March 16, 2015 and apply the Doherty case to this using the definition of flooding as defined in the Doherty decision.

Mr. Henderson provided an overview of the property as well as a history of ownership. He informed the Board the proposed home would be built at a 17'6" elevation. Flooding occurs from storm flowage, not water coming over the seawall.

He reminded the Board the history of the Doherty case stating the April 2008 application was denied by the Planning Board, that decision was affirmed by the Land Court and subsequently overturned by the Appeals court. Four basic public policy objectives were referenced in the SJC decision.

Mr. Henderson stated none of the four public policies are violated. The first question the Board was asked to answer was if the proposed dwelling would exacerbate flooding on any adjacent property.

Greg Morse, Registered Engineer of Morse Engineering, was hired to do a storm water analysis. Armory Engineers then analyzed the calculations given and the plan incorporated drainage improvements based on the storm water analysis. The front yard would be filled and the back yard would be dug out to accommodate a rain garden. Relocation and upgrading of town drains would also be completed. The proposed dwelling would be elevated on piles which ensure free flowing water.

Mr. Henderson discussed the First Responders photographed at the sight during storms and explained the Scituate Fire Chief wrote a letter stating this property is not a threat to his department and building on this lot would not cause any further tax on his departments resources. Furthermore, he did not consider the Foam Road neighborhood to be an area suffering from the most severe impact of harsh weather conditions. Mr. Henderson stated the proposed dwelling would be a flood compliant house. There would be an insignificant impact on public safety as no more people would need to be rescued.

Mr. Lynch stated the bylaw exists to stop creating these situations.

Mr. Tedeschi told the Board he has looked at individual lots and does not consider this a dangerous area.

Mr. Duggan stated the SJC judge (Judge Gaziano) ordered a review of the bylaw and that the Board answers the question of whether or not this lot is subject to flooding.

Mr. Lynch agreed with Mr. Duggan, but respected what the judge has requested in his order.

Mr. Henderson stated the bylaw does not prohibit all building. He stated the Doherty property is in a velocity zone, while Foam Road is located in the AE flood zone.

Mr. Duggan clarified the Doherty property falls partially within a velocity zone, but the proposed dwelling was to be built within the AO zone of the property. AO zone refers to over wash. The Appeals court confirmed this finding. Mr. Duggan encouraged the Board to consider 470.5 (Permitted uses) and referenced 470.9 which states that a Special Permit may be granted if a property is proven to not be subjected to flooding.

A lengthy discussion regarding the intention of the SJC order among the Board members followed. Mr. Lynch, Mr. Tibbetts and Mr. Bucchere discussed their individual interpretations of the order given by Judge Gaziano as well as the intention of Scituate Zoning Bylaw 470.

Mr. Tibbetts opened the meeting to public comment.

Jamie Mankewich of 6 Foam Road: concerned with drainage issues and height of standing water. Last winter's storm left 5 feet of standing water which took 3 or 4 days to recede. In his opinion this becomes a public safety issue. He submitted a photograph of the flooded street from winter of 2015.

Attorney Edward T. Patten, representing Thomas and Carol Walsh of 133 Jericho Road: the Judge wants the ZBA to review the matter following the Doherty decision. He discussed the bylaw and his interpretation of it with the Board, acknowledging ambiguity exists.

A lengthy discussion among Attorney Patten, Attorney Henderson and Board members followed in regard to the intention of Judge Gaziano's order, Scituate Zoning Bylaw Section 470 and the definition of "subject to flooding".

Carol Walsh of 133 Jericho Road: flooding has always been a problem. Photographs submitted show storm drain back up.

John Tedeschi explained storm drains would be addressed as part of the plan.

Suzanne Mankewich of 6 Foam Road: the lot is in a flood zone. Public safety is a concern. She has had to evacuate several times and does not want any new construction in a flood zone exacerbating the existing flooding problems.

Greg Morse explained there no record of easements was found after completion of deed research. DPW has required a line to be upgraded and other pieces be cleaned as part of the Conservation Commission's Order of Conditions.

Bob Mahoney of 5 Foam Road: the property has gone under water three times since the last vote. Much talk from Town officials about "managed retreat". This is not it!

Paul O'Connell of 5 Otis Road: water levels are rising. Flooding will only get worse.

William Spencer of 8 Foam Road: the property is the lowest lying in the area. Ocean water comes in and sits. It floods.

Suzanne Mankewich said in 1998 the property was listed as "potentially developable".

John Stonefield, land owner of 0 Foam Road: It is, in fact, a developable lot.

Mr. Mankewich reminded the Board the application was denied at a hearing in 1987.

John Tedeschi said the definition of flooding needed to be agreed on. He disputed 5 feet of water standing as stated. The water receded in one tide cycle after the last storm.

Steve Bjorkland of 15 Captain Litchfield Lane: the flood plain bylaw is antiquated, but Mrs. Doherty should be granted two Special Permits after she reappplies.

Carol Walsh of 133 Jericho Road: the lot floods. The road is blocked. Public safety is a concern.

Mr. Tibbetts explained the roads are blocked for the public safety of those in the area, not just Foam Road.

The Public Hearing was closed by Mr. Tibbetts.

The Board again discussed the first of the four questions in the order from the SJC (is the property subject to flooding?) as well as the interpretation of the bylaw and Judge Gaziano's remand.

**Mr. Tibbetts made a motion to find that in light of the Doherty decision, 0 Foam Road is subject to flooding; seconded Mr. Lynch, all in favor, unanimous.**

**Mr. Lynch moved to find development of the proposed dwelling would violate the protection of individuals who develop or occupy land on a flood plain; second Mr. Tibbetts. Those in favor: Mr. Lynch. Those opposed: Mr. Tibbetts, Mr. Bucchere. Motion failed.**

**Mr. Tibbetts moved to find development of the proposed dwelling would violate the protection of other landowners from damage resulting from development in the flood plain; second Mr. Bucchere. Those in favor: Mr. Lynch. Those opposed: Mr. Tibbetts, Mr. Bucchere. Motion failed.**

**Mr. Tibbetts moved to find development of the proposed dwelling would violate the obstruction of flood flow; seconded by Mr. Bucchere. Those opposed: unanimous.**

**Mr. Tibbetts moved to find development of the proposed dwelling would violate the protection of the community from land use which requires subsequent expenditures for public works and/or disaster relief; second Mr. Lynch. Those in favor: Mr. Lynch. Those opposed: Mr. Bucchere, Mr. Tibbetts. Motion failed.**

**There was discussion whether the Board's votes, as just recorded, met the requirements of the Court's remand decision. The Board considered whether the Court was asking it just to make new finding or whether the Court's remand decision required the Board to decide anew whether to issue a Special Permit (the Board members did not agree as to whether the Court's decision vacated the previous Board's allowance of the Special Permit or whether the Court wanted the Board to vote the Special Permit up or down). The Board considered whether to continue the hearing to consult with Town Counsel (who was not present). The Board discussed whether it should vote to reconsider the grant of the Special Permit by the Board in December 2012. Counsel for the applicant and Thomas and Carol Walsh agreed that the Board should take a vote on whether to reconsider the earlier grant of the Special Permit.**

**Mr. Tibbetts made a motion to reconsider the Special Permit issued by the Zoning Board of Appeals in 2012; seconded by Mr. Bucchere. Those in favor: Mr. Lynch. Those opposed: Mr. Tibbetts, Mr. Bucchere. Motion failed.**

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**Fourth Application: Derek and Stephanie Burke of 115 Hatherly Road, Scituate, MA request a Special Permit/ Finding in accordance with M.G.L. C40A, Section 6 and Section 810.2 of the Scituate Zoning Bylaw to allow the expansion of a pre-existing, nonconforming dwelling by more than 20% of the floor area at 115 Hatherly Road, Scituate, MA (Assessor's Parcel 39- 3- 17F).**

Representing the Applicant: Greg Morse, Certified Engineer, of Morse Engineering.  
Documents Presented: New site plan submitted June 18, 2015.

Mr. Morse explained the property is located in the R-3 zone and the home was built in 1910. It is not compliant with the front yard setback on Marion Road. The proposed addition increases the floor area by 68% with no increase in the nonconformity. The proposed addition fully complies with setbacks.

No questions were posed by the Board, and there were no comments from the public.

Mr. Lynch moved to find that the only nonconformity is the front yard setback, that proposed addition does not intensify the nonconformity or create additional ones and further finds that proposed

construction would not be substantially more detrimental to the neighborhood than the existing structure. The motion was amended to reflect that the setback was applicable to both Marion and Hatherly Road. Motion seconded by Mr. Bucchere, all in favor, unanimous.

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**Fifth Application: John Tedeschi of 1 Jericho Lane, Scituate, MA** requests a Special Permit/Finding in accordance with M.G.L. Ch. 40A, Section 6 and Section 820 of the Scituate Zoning Bylaws to allow the razing of a pre-existing, non-conforming multifamily and reconstruction of (2) 1-unit detached single residential structures at **28 Otis Place and 27 Allen Place, Scituate, MA (Assessor's Parcel 50-4-24 and 50-4-6).**

Representing the Applicant: Attorney Richard Henderson and Mr. Greg Morse of Morse Engineering.  
Documents presented: Site Plan showing proposed condominium structures dated May 28, 2015.  
Letter to ZBA from Brian McLaughlin of 29 Otis Place.

Mr. Henderson explained the lot is a preexisting non-conforming lot with two dwellings in one structure on a single lot. The nonconformity exists in the lot width, front yard setback and use. The applicant proposed two dwellings in two separate structures on a one lot with the land in common ownership. The proposed plan meets all setback requirements and has two curb cuts. One is on Otis Place and one on Allen Place. Two separate addresses would exist.

The Board discussed the definition of a "dwelling" and if necessary, attaching the two structures to conform to Section 430 of the zoning bylaws as well as Section 820.

Mr. Tibbetts opened the meeting to public comments.

Tom Clark of 32 Otis Place: Highly supportive of the project.

Brian McLaughlin of 29 Otis Place: submitted a statement of support to the Board dated June 18, 2015. He asked the Board to be aware of setting a precedent, though he appreciates Mr. Tedeschi's interest in the neighborhood and considers the proposed plan a great improvement.

Susanne Mankewich of 6 Foam Road: supports the project and believes it would be a great addition to the neighborhood.

Glen Gregory of 36 Otis Place: spoke in support of the application but was concerned that the other properties on Otis Place and/ or Allen Place front on both streets and hoped this would not set a precedent.

Mr. Lynch inquired about the ownership of the property. Mr. Henderson stated that it was under contract for sale to Mr. Tedeschi and proper documentation would be submitted to the Board.

**Mr. Lynch moved to grant a Special Permit/ finding that the existing lot and structures are nonconforming with respect to Bylaw Section 430.1., as well as lot width and front yard setback and further, that the proposed development does not intensify any existing nonconformity and is not substantially more detrimental to the neighborhood than the existing structures, seconded by Mr. Bucchere, all in favor, unanimous.**

**Minutes from May 21, 2015 meeting presented for approval.**

Mr. Tibbetts moved to approve minutes as presented, seconded by Mr. Lynch, all in favor, unanimous.

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**Motion to adjourn by Mr. Bucchere, seconded by Mr. Lynch, all in favor, unanimous.**

Meeting adjourned at 10:45pm.

Respectfully Submitted,

*Anne M. Kelly*

Anne Kelly